STATE OF MICHIGAN

COURT OF APPEALS

In re Estate of JACK PRINSTEIN, a/k/a/JACOB PRINSTEIN, Deceased.

STEVEN LEVINE, Personal Representative of the Estate of JACK PRINSTEIN, a/k/a/JACOB PRINSTEIN,

Petitioner-Appellee,

v

ALLEN PRINSTEIN,

Respondent-Appellant.

UNPUBLISHED
June 21, 2005

No. 252682
Oakland Probate Court
LC No. 03-286436-DE

Before: O'Connell, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Respondent appeals as of right from an order granting petitioner's motion for a turnover of assets. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, respondent argues that the trial court erred when it granted petitioner's motion for a turnover of assets because the elements of a valid inter-vivos gift had been met. We disagree.

When reviewing the findings in a case, which was tried by a probate court without a jury, this Court reviews for clear error. A finding is clearly erroneous when the reviewing court is left with a definite and firm conviction that a mistake was made, even if there was evidence to support the finding. *In re Estate of Bennett*, 255 Mich App 545, 549; 662 NW2d 772 (2003).

For a gift to be valid, (1) the donor must possess the intent to transfer title gratuitously to the donee, (2) there must be actual or constructive delivery of the subject to the donee, unless it is already in the donee's possession, and (3) the donee must accept the gift. Acceptance is presumed if the gift is beneficial to the donee. *Davidson v Bugbee*, 227 Mich App 264, 268; 575 NW2d 574 (1997). A written assignment is unnecessary to make an inter-vivos gift of securities valid. *Cook v Fraser*, 298 Mich 374, 378; 299 NW 113 (1941). Furthermore, the fact that a donor collects dividends on a security does not make an inter-vivos gift of that security invalid.

Id. On the other hand, mere expressions of intention by a donor, unaccompanied by requisite steps to effect a legal transfer, are insufficient to create a valid gift. *Loop v Des Autell*, 294 Mich 527, 531; 293 NW 738 (1940). To constitute a valid inter-vivos gift, it must take effect at once, and pass entirely beyond the control of the donor. *Moore v Beecher*, 277 Mich 604, 610; 269 NW 17 (1936). And, even when a donor signs an instrument stating that he/she is giving all of his/her property to a donee, it has been found that there was no inter-vivos gift when subsequent conduct showed that the involved parties did not regard the signed instrument as passing title. *Id*. at 611.

We conclude that the probate court properly determined that Jack Prinstein did not possess the intent to transfer title gratuitously to respondent. Our conclusion is not based solely on the fact that the stock certificates were never signed by Prinstein or that he collected dividends on the stocks, and thus, our opinion is consistent with *Cook*, *supra* at 378. Rather, our opinion is based on the fact that, when Prinstein gave the stock certificates to respondent, neither he nor respondent believed that title was being passed to respondent. Both parties were under the impression that title would not pass until Prinstein endorsed the certificates. Therefore, given the state of mind of the parties, it cannot be said that an intent to gratuitously transfer title ever existed.

The lack of intent to pass title is consistent with Prinstein's comments to Karen Team, Sarah Prinstein Kott and Steven Levine that "he did not want [respondent] to have anything that was his," "when he dies [respondent] gets nothing" and that "[he] did not like [respondent]." The lack of intent is also evidenced by: Prinstein's request to his attorney, Paul Groffsky, to take respondent out of his will; Prinstein's repeated subsequent refusal to put respondent back in his will; and Prinstein's repeated comments to Groffsky that he did not want to make any inter-vivos gifts and specifically did not want respondent to get any of his things. Furthermore, the lack of intent is supported by respondent's repeated requests to try to get Prinstein to sign the back of the certificates and Prinstein's subsequent denial of respondent's requests, and by the fact that no one who testified, other than respondent who stood to gain and respondent's son, Jay Prinstein, who indirectly stood to gain, had been told by Prinstein that he gave stocks to respondent. *Beecher*, *supra* at 611.

Given the fact that an abundance of evidence supports a finding that Prinstein did not possess the intent to transfer title gratuitously to respondent, the probate correctly determined that all the elements of a completed inter-vivos gift were not met. Therefore, the probate judge did not commit clear error when he granted petitioner's motion for a turnover of assets.

Affirmed.

/s/ Peter D. O'Connell
/s/ Bill Schuette
/s/ Stephen L. Borrello